Supreme Court, U.S.
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No. 00-640

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

James McGuire, Lorraine McGuire, and Marital Minor Child,
PETITIONERS, Pro Se

vs.

Rock County, Rock Co. Board of Supv., Village of Brooklyn, Village of Brooklyn Police Dept., Dean A. Cornford, Terry G. Maybee, Thomas A. Schroeder, Craig Knutson, Charles A. Holznecht, Howard L. Erickson, James A. Dilley, Curtis N. Fell, Frank D. Dubanowich, Thomas W. Gehl, Arthur R. LeFeber, William Roberts, David Jon O'Leary, Thomas G. White, Stephen Carpenter, Gary L. Luhman, Richard T. Werner, Four Unknown Defendants,
RESPONDENTS

On Petition For Writ of Certiorari
To The 7th Circuit Court of Appeal

PETITIONERS REPLY BRIEF IN SUPPORT

Submitted on November 30, 2000

James McGuire, Lorraine McGuire, and Marital Minor Child, Pro Se Petitioners
mailing address: P.O. Box 17
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Respondents Miscontrue Our Complaint

Respondents misconstrue the allegations contained within our Complaint {ref. Dkts #1, #3} We always asserted no Respondent had lawful right to enter or remain in our private curtilage or within one square inch of our house--and had no probable cause to support the seizures and subsequent formal arrest, lacking arrest authority inside our home and doing acts the Constitution prohibits. We never agreed our case involves issue of whether excessive force was used by an officer while making a lawful arrest--instead alleging the arrest was unlawful and no Respondent held right to use (nor to approve use of) force of any kind or extent against any McGuire family member. Fell's sole basis for "resisting" charge was that Mr. McGuire refused to answer Fell's questions and then went to hold his child. This was in absence of Fell providing Miranda warnings before or during his coercive questioning in which he roughed up Mr. McGuire while demanding he confess to having been an intoxicated driver hours earlier. The Supreme Court held, in Ullmann v. United States, 76 S. Ct. 497, 500-501, the Constitution gives a witness the privilege to remain silent:

> "Too many, even those who should be better advised, view this privilege as a shelter for wrongdoers. They too readily assume that those who invoke it are either guilty of crime or commit perjury in claiming the privilege."

We have all along vigorously asserted our right to use reasonable force to ward off unlawful agressive seizure of our persons by officer illegally inside our house and to protect our young child from that threatening intruder. No probable cause exists that Mr. McGuire violated Wis.

Stats. 946.41 inside our house, with Fell failing to meet its underlying statutory criteria. Complaint alleges McGuires were subjected to coercive questioning in violation of the 5th Amendment--speaking directly to the fact no Miranda warnings were provided to either James McGuire or his wife prior to Fell's accusatory questioning of each.

A Jury Does Not Determine Legal Standard
It is not within province of a jury nor within discretion of a district court judge to create an individualized interpretation of what is a home entry.
"In any event, the District Court as well as the Courts of Appeals must follow the decisions and interpretations of our highest court in spite of any individual predilections that may exist." United States v. Chase, 281 F.2d 225 (1980)

No Pre-Knowledge of Presence of Intruders
The record on appeal does not indicate Mrs. McGuire had pre-knowledge, or could anticipate, that she would find any person, let alone a law enforcement officer, having broken into her home. She had no means to anticipate the strange man (whose head she momentarily saw outdoors below the home after she awoke to family dog barking and doorbell ringing, before she went to contain the dog in another area of the house in preparation to answer her front door) would break into her house thru her locked front door while she was putting her dog away. Fell swore that from the enclosed kitchen porch he observed Mrs. McGuire taking her dog to another area of the house (but denying he found our front door locked)--Fell presumably peering into kitchen door's small curtained window.

After Mrs. McGuire discovered Fell inside the home, she had a brief interchange with him and watched him leaving, she turned off the light and re-locked that inner kitchen door which separated her bodily from Fell--and had attempted to close it as Fell pushed it back open. {ref. Dkt. #89} It is clear that Constitution affords protection within one's private curtilage and inside the physical boundaries of one's house, with "entry" made by crossing home's outer threshold.

Fairness, Context, and Record Sufficiency
The record on appeal is plentiful as to provide opportunity for meaningful review, with our petition citing the record from numerous certified docket entries to show full context and meaning of Respondents' sworn assertions. FRAP Rule 10 allows records of proceedings other than official transcript to be part of record on appeal; also there is partial official transcript on record as to district court proceedings in addition to record McGuires provided; finally, the layperson transcript (to which no one timely objected to its accuracy) is within certified docket entries in record on appeal, filed in district court in support of our motion to vacate final judgment. All Respondents received timely notice of the issues involved in the appeal and had ample opportunity to themselves place on record additional official transcripts they felt essential.

No Contradiction In Our Argument
Police ignored our outdoor doorbell by not remaining OUTSIDE the home to wait for an occupant to answer our front door. The officers claims they did not see or use it (or lack of memory) does not change

fact that our lighted outdoor doorbell existed, that it was easily visible, and in operable condition. We We emphasize that under the particlar facts of this case, it was unreasonable for either officer NOT to remain outside our house (regardless of whether it was cold that night) until an occupant came to front door of our house to respond. Rock County Respondents, on p. 7 of their brief in oppos., use smoke-and-mirrors tactic of ommitting critical parts of a paragraph they cited (of Mrs. McGuire testimony in Dkt. #89), excluding her detailed testimony as to such facts as ice and condensation being on the home's outside door obscuring visibility thru it , her only seeing the head of a strange man outdoors below the house, her holding her child the entire time (even as she put her dog way), and as to her confront-ation with Fell who pushed open the inner kitchen door against her shutting it.

Up until second day of trial, Fell had filed sworn affidavits and discovery responses asserting Mrs. McGuire had answered home's front door and there consented for Fell to enter the home, where Fell after taking a few steps inside saw in plain view the sleeping Mr. McGuire such to justify seizing him.

Complaint's Issues Not Fully Litigated Should Be Reviewed

Although Mr. McGuire challenged his arrest for lack of probable cause (and on other grounds) within his motion to dismiss 1996-1997 criminal resisting prosecution, this issue was never addressed in state circuit criminal court (dismissal with prejudice ruling was made before Werner ever allowed Mr. McGuire to litigate either Fell's lack of arrest

authority or the clear lack of probable cause) nor in federal district court (where Judge Shabaz made erroneous finding probable cause existed for the arrest, citing Dilley later approved it and Holznecht's 2/3/97 finding at initial hearing held 34 days after the warrant-less in-home arrest--and based upon proven false statements of Fell and Dubanowich). Unconstitutional government intrusion into our home cannot fairly provide basis for probable cause that Mr. McGuire criminally "resisted".

"If the observations of either or both of those officers constituted a "search", the search was clearly illegal. ...We need not discuss the propriety of ... 'search before arrest' doctrine since that doctrine does not confer legality upon a search which furnishes the requisite probable cause for the subsequent arrest." People of State of California v. Hurst, 325 F.2d 891, 898.

Respondents improperly request issue preclusion as to valid issues we brought forward in our Complaint and continued to raise on appeal, with district court sweeping them away without allowing us to fully litigate them.

"The general rule is that issue preclusion attaches only when an issue is actually litigated and determined by a valid and final judgment." Mitchen v. Helms, 530 U.S.__ (2000) (5th Cir., decided June 28th, 2000)

Respondents' misreliance on Davis v. U.S. Ruling, and Constitutional Standard

Respondents' reliance on Davis v. United States, 327 F.2d 301, 303 (9th Cir., 1964) is misplaced, in that there, officers came to home's outer front door during daylight hours, knocked on it, waited for a

response, whereupon someone opened the front door and stated "Come in." In instant case, police first approached darkened house in isolated rural setting in dead of night, did not wait for occupant to answer front door, forced open outer locked door to the farmhouse, and was discovered inside the first room by an occupant moving towards front of her house to investigate who was outside her house and what he wanted. Her right to withhold consent for entry and search was taken from her by the officers taking what they wanted --first Fell forcing open our home's outer locked door and later Roberts walking right in. Subjective standard used in Davis to determine intent of police has been replaced with an objective standard applied to police conduct. The only "threshold" relevant to legality of police entry is the one at the "front door of any man's 'castle'", being our enclosed kitchen porch door that closed to the great out-of-doors. Officers' deliberate blindness as to our lighted operable doorbell outside the house mere inches from front door's doorhandle cannot be rewarded. Such physical home invasion as applied to then-existing Wisconsin statutory law on 12/31/96 and applicable to deemed to have official capacity--constituted criminal trespass. Not one of the named Respondents should have their conduct, as a matter of law, looked upon as pursuant to discretion.

Pursuant to Whren v. United States, 116 S. Ct. 1769 (1996), proper focus of fourth amendment inquiry is objective conduct conduct of the police officer.

Court in United States v. Blount, 98 F.3d 1489 (5th Cir., 1996), found district court's factual finding as to officer's state of mind was inapposite to question

presenting of whether officer's conduct invaded defendants' legitimate expectation of privacy in the curtilage of their home.

"It is based upon the reality of an actual intrusion into a constitutionally protected area. ...'It may be that it is the obnoxious thing in its mildest and least repulsive form; but the illegitimate and unconstitutional practices get their first footing that way, namely by silent approaches and slight deviations from legal modes of procedure." Boyd v. United States, 116 U.S. 616, 635.

Because district court refused to acknowledge our reasonable expectation of privacy within fence-enclosed yard surrounding our home and within even the first room of our house, and failed to instruct as to presence of coercion relative to consent for police continuing a search already underway, the jury verdict delivered on improperly stated legal basis should be given no deference.

"Because the district court's ruling was influenced by an incorrect view of the law the factual findings on this issue are due no deference." United States v. Capote-Capote, 946 F.2d 1100 (5th Cir., 1991), cert. denied, 112 S. Ct. 2278 (1992). As to "peeping-Tom" nature of Fell spying on Mrs. McGuire's movement through her house while he stood in a place he no right to be, his conduct may be likened to that of officers in Brock v. United States, 223 F.2d 681, 685 (5th Cir., 1955):

"Whatever quibbles there may be as to where the curtilage begins and ends, clear it is that standing on a man's premises and looking in his bedroom window is a violation of his right to be let alone as guaranteed by the Fourth Amendment." Amendment."

"The Fourth Amendment, and the personal rights which it secures, have a long history. At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." Silverman v. United States, 365 U.S. 505, 511 (D.C. Cir., 1961)

Fell's unlawful entry and search cannot later provide Roberts with a basis of lawful authority to barge right in the house unannounced and remain inside first room of our home until his presence was discovered at time Fell ordered Mrs. McGuire to go into the kitchen (from dining room) and "Get that door!" as he pushed Mr. McGuire to the front of house.

Case Placed In False Light To Jury

Factfinding by district court judge as to Roberts and by 11/98 jury as to Fell--upun an improperly stated rule of law as to consent is irrelevant to Complaint's proper resolution, given district court's improper view taken as to McGuires curtilage and first room of their home, not open to the general public. Our case was placed in a false light before the jury, and provided jury with incorrect standard of law upon which to deliver verdict. No verdict was delivered upon a properly stated rule of law as to to retroactive consent for police home entry and search. District court failed to contemplate, or provide jury instruction on, presence of coercion negates occupant's ability to make voluntary waiver of her and her family members constitutional rights. District judge abused his discretion by making express rulings to prohibit McGuires from presenting to the jury critical objective evidence which discredited officers'

material claims as to "implied consent", "implied mutual aid request", objective facts underlying the basis for the entry and search, as to facts material to Mrs. McGuires' conduct and demeanor, and objective facts as to the officers numerous home entries (the number of, timing of, sequence, and substance of)--to show further acts of wrongdoing material to resolution of our Complaint. Those biased rulings combined to deprive jury of making any informed reliable credibility determinations.

No Deference Due Excessive Force Verdict
The jury verdict as to "excessive force" must be given no due deference, in that the standard of law presented to them--over Petitioners' objections (see Dkts. #164, #167, #171 as to plaintiffs objections to standard of law)--which eroneosly Fell and Fell had made a lawful arrest of Mr. McGuire and held right to use force in making that arrest. District court also failed to inform jury of McGuires' right to resist aggressive unlawful seizure and to protect our young child from a hostile home intruder.

District Court "Extraordinary Statement"
Respondents' citation of district court Judge John C. Shabaz's "extraordinary statement", which trashes McGuires' motives and accuses us of perjury, reveals the "extraordinary" extent of prejudicial bias district court judge provided in his handling of our case, displaying his personal bias against pro se plaintiffs, with his unfair prejudicial comments and rulings issued from the bench before, during, and after trial--demonstrating his personal disdain for ourselves and civil actions against the kinds of defendants in our case.

Clear Error As to Implied Request Finding
There is no reasonable basis in the record to support finding that Green Co. Sheriff Dept. made an "implied" mutual aid request on 12/31/96 for Rock Co. Sheriff Dept. to handle a matter within in Rock County. Record reveals personal frolic on part of Fell and Roberts in making a legally unauthorized late-night "pursuit to investigate" outside their limited police jurisdictions, inside McGuires' private curtilage and within their home's inner sanctum.

Roberts' Unannounced Home Entry
Roberts testified he made unannounced entry into first room of McGuires' home subsequent to Fell's entry, with district court's skewed view of constitutional standard as to the first room of a house, erroneously found "implied consent" for Roberts to enter McGuires' home.

Conclusion as to Petitioners' Reply
Respondents briefs in opposition do not merit this Court to deny granting our petition for writ of certiorari. Material to some Respondents claim of retroactive "consent" being given by Mrs. McGuire, the circumstances she was subjected to, and her reactions to it, are void of element of voluntariness on her part such to willingly waive the privacy and due process rights of herself and her family. We humbly ask for opportunity for these citizens rights to be fully adjudicated.

James McGuire, Lorraine McGuire, and on behalf of Marital Minor Child
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